ST 05-0022-GIL 04/29/2005 AIRCRAFT USE TAX

The transfer of an aircraft from a parent corporation to a newly formed corporation created by a parent corporation, is a taxable event under the Aircraft Use Tax Law. See. 35 ILCS 157/10-1 et seq. (This is a GIL.)

April 29, 2005

Dear Xxxxx:

This letter is in response to your letter dated March 18, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

> This letter contains details concerning a series of related transaction that are being contemplated to occur in the near future. We respectfully request that the Illinois Department of Revenue to review this letter and issue a General Information Letter under 2 Ill. Adm. Code 1200.120 discussing the Department's impression as to how these transactions should be taxed for purposes of the state's Retailers' Occupation Tax Act, Use Tax Act, and/or Aircraft Use Tax Law.
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> Current fact situation:
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> Taxpayer A, an S corporation for federal and Illinois income tax purposes, is in the business of aircraft repair and restoration. In addition, the taxpayer owns an aircraft that is used in conducting the business of the taxpayer and also is leased to other users. For business reasons, including isolation of liability, the taxpayer wished to change its current corporate structure.
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> Proposed structure changes:
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> The taxpayer plans to form two new corporations, both of which will be S corporations for federal income tax purposes. The first corporation, P, will be a holding company whose sole activity will be to own the stock of the current taxpayer, A, and the 2nd newly

formed corporation, B. A will own and operate the aircraft repair and restoration business and B will own and operate the airplane. Since the corporations involved are S corporations, the subsidiaries will be disregarded entities (Qualified Subchapter S Subsidiaries) for federal and Illinois income tax purposes and only the parent corporation, P, will file federal or Illinois income tax returns. All income and deductions of A & B will be included on P's return.

The new corporate structure will be achieved in the following manner. The shareholders of A will transfer their stock in A to the newly formed corporation, P. P will then be the parent corporation of A. P will then form a new subsidiary, B. The airplane will be transferred from A to B via P. The creation of P and B will not be taxable events for income tax purposes; no cash or other proceeds will change hands during the transfer of the airplane, and no federal or Illinois income tax consequences will be triggered by the transfer of the airplane.

Queries:

Since P, A, and B will be considered as one company for income tax purposes and since A will be the only company selling tangible personal property in the future, is there any need for P or B to register for Illinois sales or use taxes, or can all the companies be covered by A's current registration?

If all of the companies can be included under A's current Illinois sales and use tax registration number, is the transfer of the plane to B through P taxable?

If additional information is required, or if you would like to speak to someone concerning this series of transactions, please call. Your response and consideration in this matter is most appreciated.

DEPARTMENT'S RESPONSE:

I apologize for the delay in responding to your request. For general information purposes, the transfer of an aircraft from a parent corporation to a newly formed corporation (a disregarded entity") created by a parent corporation, is a taxable event. This answer assumes that the disregarded entity is a separate legal entity created by the parent corporation. This answer also assumes that the transfer of the aircraft to the separate legal entity took place on or after July 1, 2003 (the effective date of Public Act 93-24 which created the Aircraft Use Tax Law).

Based on these two assumptions, tax is due on the transaction under the Aircraft Use Tax Law (35 ILCS 157/10-1 et seq.). Tax is due under that Act for the privilege of using the aircraft in this State, whether it is acquired by gift, transfer, or purchase.

For the purposes of the Aircraft Use Tax, whether an entity is required to be registered with the Department of Revenue to make retail sales in Illinois is irrelevant. Rather, the Aircraft Use Tax is triggered if the transaction is between two separate legal entities. In this case, the actions taken by the parent corporation to protect itself for liability purposes, that is, ensuring that the aircraft is held by a completely separate legal entity, are the same actions that trigger the imposition of the Aircraft Use Tax on the transfer of the aircraft from the parent corporation to the newly formed disregarded entity.

The fact that the separate legal entity is a disregarded entity for federal and Illinois income tax purposes does not change the outcome under the Aircraft Use Tax Law.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk